

**FILED**  
**United States Court of Appeals**

**UNITED STATES COURT OF APPEALS Tenth Circuit**

**FOR THE TENTH CIRCUIT September 10, 2013**

In re:	<b>Elisabeth A. Shumaker</b> <b>Clerk of Court</b>
KENNETH MAURICE WOODS,	No. 13-5079
Movant.	(D.C. Nos. 4:99-CR-00020-TCK-9 & 4:12-CV-00147-TCK-FHM) (N.D. Okla.)

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**ORDER**

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Before **KELLY, HARTZ, and MATHESON**, Circuit Judges.

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Movant Kenneth Maurice Woods, a federal prisoner proceeding through counsel, seeks authorization to file a second or successive 28 U.S.C. § 2255 motion challenging his 1999 drug convictions. Because Woods has not demonstrated that his proposed claim meets the authorization requirements under § 2255(h), we deny authorization.

In 1999, Woods was convicted by a jury of conspiracy to distribute various controlled substances and of possession with intent to distribute heroin, for which he was sentenced to 216 months' imprisonment. This court affirmed his conviction on direct appeal. In 2002, Woods filed a motion under § 2255 challenging his conviction and sentence. The district court denied relief, and this court denied Woods a certificate of appealability.

In March 2012, acting through his current counsel, Woods filed a second § 2255 motion challenging his conviction. Woods contended that testimony provided

at his trial by Tulsa Police Officer Harold Wells “can no longer be relied on as credible because of his police corruption conviction.” Mot. Under 28 U.S.C. § 2255 at 4. Attached to the § 2255 motion was a pro se brief from Woods in which he asserted a second ground for relief: evidence recovered by Officer Harold Wells and Officer John K. Gray in several searches was tainted by the officers’ subsequent convictions involving police corruption. And although he did not designate it as a separate ground, Woods also claimed that he was actually innocent of the conspiracy charge because the dismissal of conspiracy charges against several of his co-defendants “render[ed] the conspiracy non-existent.” Br. in Supp. of § 2255 Mot. at 11; *see also id.* at 11-15.

In an Opinion and Order issued in June 2013, the district court concluded that Woods’ § 2255 motion was an unauthorized second or successive motion over which the court had no jurisdiction. *See, e.g., In re Cline*, 531 F.3d 1249, 1251-52 (10th Cir. 2008) (per curiam). The court further concluded that it was in the interest of justice to transfer the matter to this court, under 28 U.S.C. § 1631, rather than to dismiss the matter for lack of jurisdiction. *See Cline*, 531 F.3d at 1252.

Once the matter was transferred to this court, we directed Woods to file a motion for authorization and/or a motion to remand. Woods filed the current motion for authorization, raising only one claim: “Ex-Tulsa police officer Harold Wells[’s] testimony as arresting officer at the trial of Kenneth Woods can no longer be considered reliable because of his conviction in 2011 on five [5] counts of

corruption.” Mot. for Auth. at 6. At our direction, the government filed a response to Woods’s motion; Woods did not file a reply.

Woods contends that his claim warrants authorization under 28 U.S.C. § 2255(h) because it is based on “newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [him] guilty of the offense,” *id.* § 2255(h)(1). Woods’ claim is based on the indictment and conviction of former Tulsa Police Officer Harold Wells a decade after Woods’s own trial. Wells was charged in 2010 with ten counts of criminal activity, some of which dated as far back as January 2006. He was convicted in June 2011 of four of the counts: conspiracy to possess with intent to distribute and distribution of methamphetamine; use of a communication facility to facilitate commission of a drug crime; conspiracy to steal public funds; and aiding and abetting the theft of public funds. All of these counts were for criminal activity that occurred during an FBI sting operation in 2009. Wells was acquitted of the other six counts.<sup>1</sup> None of the charges against Wells appear to relate to the charges against Woods, and Woods points to no evidence of a connection.

Even so, Woods claims that Wells’s conviction makes his trial testimony unreliable. But even if we assume that Wells’s trial testimony could have been

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<sup>1</sup> The jury acquitted Wells of five of the counts, and the court granted a judgment of acquittal as to the sixth.

impeached based on his conduct many years later, Woods must still show that, but for Wells's testimony, no jury would have found him guilty of the relevant drug offenses. *See id.* Woods has given us no trial transcripts or other record evidence by which we might judge the materiality of Wells's testimony. The partial transcripts the government has provided show that other officers testified to some of the same events that Wells did. And as we noted in Woods's direct appeal, "[t]his was a five week jury trial with numerous witnesses being called by the government, which . . . included co-conspirators who, along with others, gave direct testimony involving Woods and the other defendants." *United States v. Busby*, 16 F. App'x 817, 823 (10th Cir. 2001). There is simply no basis for us to conclude that Wells's trial testimony was so material that, had it been successfully impeached, no reasonable jury would have found Woods guilty.

The motion for authorization is therefore denied and this matter is terminated. This denial of authorization "shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker".

ELISABETH A. SHUMAKER, Clerk